IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.12 of 1998
Date of Decision:10.11.2006

Commissioner of Income Tax, Patiala
.....Petitioner

Vs.

Diwana Mal & Sons, Ram Bazar, Shimla
.....Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Dr. N.L.Sharda, Advocate for the petitioner.

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JUDGMENT

The following question of law has been referred for opinion of this Court arising out of order passed by the Income-Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in I.T.A. No.998/Chandi/90 dated 6.3.1997 in respect of assessment year 1988-89:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in not accepting the total amount of investment worked out towards construction of a house by the DVO, who is a technically competent to work out the investment towards the cost of construction?"

Briefly the facts are that the assessee constructed a house during the relevant year. On account of valuation, the matter was referred to Department of Valuation Officer who estimated the cost of construction at Rs.10,71,800/- as against Rs.6,85,810/- shown by the assesee. Accordingly, finding the difference between the cost shown by the assessee and the

amount determined by the Departmental Valuation Officer, the Assessing Officer made additions in the income of the assessee as investment from unexplained sources. In appeal, Commissioner of Income-tax (Appeals) (for short, `the CIT(A)) deleted the addition by making following observations in the order:-

> "I have considered the submissions made. I have gone through the report of the Valuation Officer on the basis of which the impugned addition has been made. In the said report the date of inspection is 30.8.1986 and it is very clear from the report that valuation is upto 31.3.86. In the said report the learned Valuation Officer has also given the details of investment made by the appellant from the financial years 1969-70 to 1985-86. So, this report should have been considered in asstt. Year 1986-87 and addition made in asstt. Year 1986-87 itself but the then ITO, A-ward, Shimla, shifted his responsibility by appending an Office Note to his assessment order which is reproduced above. Each assessment year is a separate and self contained period and any excess investment in the cost of construction in asstt. Year 1986-87, an addition cannot be made in the asstt. Year 1988-89. Accordingly, I hold that there is no justification for the impugned addition. The same is accordingly deleted. This ground succeeds and the appellant gets a relief of Rs.3,86,000/-.

In further appeal by the revenue before the Tribunal, the order passed by the CIT(A) was confirmed.

Learned counsel appearing for the Revenue has not been able to

persuade this Court to take a view contrary to what has been taken by the authorities wherein it was held that no investment whatsoever was made by the assessee during the year in question as the valuation of the House was upto 31.3.1986 and even the report of the Departmental Valuation Officer is dated 30.8.1986 which did not fall during the assessment year in question. Accordingly, the question referred is answered against the Revenue and in favour of the assessee.

(RAJESH BINDAL)
JUDGE

November 10, 2006 **(AJAY KUMAR MITTAL)**
renu **JUDGE**